

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GAETANO D'ATTORE,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.
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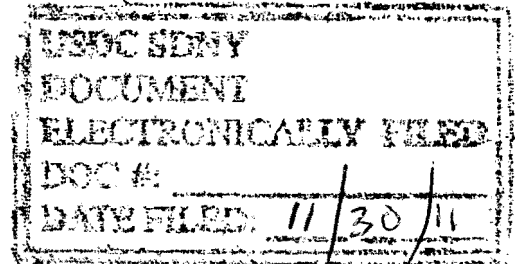
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REPORT & RECOMMENDATION

10 Civ. 815 (JSR) (MHD)



TO THE HONORABLE JED S. RAKOFF, U.S.D.J.:

By Report and Recommendation dated October 17, 2011, we addressed a motion by pro se plaintiff Gaetano D'Attore seeking entry of a default judgment against the defendants. We recommended denial of that application based on plaintiff's failure to demonstrate any basis for the relief that he sought. Now plaintiff has filed a very similar motion, seeking the same relief. In his motion, which is dated November 14, 2011, plaintiff asks for judgment based on purported -- and very vaguely described -- discovery misconduct by defendants' counsel, which he characterizes as "continuous, repeated[], illegal, unethical, immoral acts of misconduct" (Pl.'s Notice of Mot.) as well as "deliberate indifferen[ce]." (Pl.'s Affirmation in Supp. of Mot. 5).

The short answer, as was the case with plaintiff's earlier

motion, is that there is no demonstrated basis for plaintiff's conclusory accusations of misbehavior. Moreover, he fails to justify entry of a default in any event. Defendants filed a timely answer to the complaint in June 2011, conducted and provided discovery, and moved for summary judgment at the conclusion of the discovery period -- a motion that is currently pending.

In short, we recommend that plaintiff's latest default-judgment motion be denied.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from this date to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies to be delivered to the chambers of the Honorable Jed S. Rakoff, Room 1340, and to the chambers of the undersigned, Room 1670, 500 Pearl Street, New York, New York 10007-1312. Failure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e); Thomas v. Arn, 470 U.S. 140, 150-52 (1985); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

DATED: New York, New York
November 30, 2011

RESPECTFULLY SUBMITTED,



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Report and Recommendation have been mailed today to:

Mr. Gaetano D'Attore
10-A-5728
Upstate Correctional Facility
P.O. Box 2001
Malone, New York 12953

Lisa M. Richardson, Esq.
New York City Law Department
100 Church Street
New York, New York 10007